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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JORGE CARVAJAL-ECHEAGARY,

Plaintiff,

v.

BRAD CAIN, DR. GARTH GULICK, AND
DR. DIGIULIO, ET AL,

Defendants.

Case No. 2:20-CV-00193-AA

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S CIVIL COMPLAINT

Defendants BRAD CAIN, GARTH GULICK, M.D., and CHRISTOPHER DiGIULIO
M.D. by and through legal counsel, Michael Washington, Senior Assistant Attorney General,
hereby answer Plaintiff's Civil Complaint and admit, deny and allege as follows:

1.

Admit that at times material to Plaintiff's Civil Complaint from February 3, 2018 to
February 3, 2020, Brad Cain was employed by the Oregon Department of Corrections (ODOC)
as Superintendent of Snake River Correctional Institution (SRCI) in Ontario, Oregon.

2.

Admit that at times material to Plaintiff's Civil Complaint from February 3, 2018 to February 3, 2020, Garth Gulick was licensed to practice medicine in the State of Oregon and was employed by ODOC as a Corrections Physician Specialist.

3.

Admit that at times material to Plaintiff's Civil Complaint from February 3, 2018 to February 3, 2020, Christopher DiGiulio was licensed to practice medicine in the State of Oregon and was employed by ODOC as a Corrections Physician Specialist to April 20, 2018 when he became Medical Director.

4.

Admit that Plaintiff, Jorge Carvajal-Echeagary, SID #15797562, is an Adult in Custody (AIC) in the custody of ODOC who was admitted on July 12, 2005 and is currently housed at Snake River Correctional Institution (SRCI) in Ontario, Oregon with an earliest release date of July 25, 2023.

5.

Defendants lack sufficient information to form a belief as to the truth of the remaining allegations and claims in Plaintiff's Civil Complaint and therefore deny them.

FIRST AFFIRMATIVE DEFENSE

(Qualified immunity)

6.

Defendants incorporate herein the admissions, denials and allegations set forth above.

7.

Defendants allege that at all times relevant to Plaintiff's Civil Complaint from February 3, 2018 to February 3, 2020, they were acting in good faith and within their discretion pursuant to the laws and statutes of the State of Oregon and the United States, and Defendants' conduct

violated no clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

8.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

9.

Defendants allege that from February 3, 2018 to February 3, 2020, Plaintiff has not been deprived of any right, privilege or immunity secured by the United States Constitution, the laws of the United States or the State of Oregon and therefore fails to state a claim under 42 U.S.C. §1983. *Daniels v. Williams*, 474 U.S. 327, 333 (1986); and *Davidson v. Cannon*, 474 U.S. 344 (1986).

THIRD AFFIRMATIVE DEFENSE

(Prison Litigation Reform Act)

10.

Defendants incorporate herein the admissions, denials and allegations set forth above.

11.

Defendants assert all provisions of the Prison Litigation Reform Act, including the provision requiring exhaustion of administrative remedies, to Plaintiff's federal claims in his civil complaint.

FOURTH AFFIRMATIVE DEFENSE:

(Eleventh Amendment Immunity)

12.

Defendants incorporate herein the admissions, denials and allegations set forth above.

13.

Defendants, to the extent that they are sued in their official capacity, allege that they are immune from suit in federal court and protected under Eleventh Amendment immunity. *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459, 462 (1945), *overruled in part on other grounds*, *Lapides v. Bd. of Regents*, 535 U.S. 613, 623 (2002). Under the Oregon Tort Claims Act, regarding any claims brought against employees or agents acting in their official capacity, the State of Oregon will be substituted for individually named parties acting within the course and scope of their employment. Or. Rev. Stat. § 30.265. That also results in the State of Oregon being sued in federal court, and Defendants are thus immune from state law claims in this suit.

FIFTH AFFIRMATIVE DEFENSE

(Oregon Tort Claims Act)

14.

Defendants incorporate herein the admissions, denials and allegations set forth above.

15.

Plaintiff's Civil Complaint from February 3, 2018 to February 3, 2020 is subject to provisions in the Oregon Tort Claims Act, including:

- (a) Discretionary Function Immunity under Or. Rev. Stat. § 30.265(6)(c);
- (b) Apparent Authority Immunity under Or. Rev. Stat. § 30.265(6)(f);
- (c) Public Body Immunity under Or. Rev. Stat. § 30.265(5)

SIXTH AFFIRMATIVE DEFENSE

(Comparative Fault)

16.

Defendants incorporate herein the admissions, denials and allegations set forth above.

17.

Plaintiff's negligence in one or more of the following particulars contributed to the injuries described in Plaintiff's Civil Complaint from February 3, 2018 to February 3, 2020:

(a) Failing to follow up on previous medical diagnosis.

SEVENTH AFFIRMATIVE DEFENSE:

(Statute of Limitations)

18.

Defendants incorporate herein the admissions, denials and allegations set forth above.

19.

The actions alleged in Plaintiff's Civil Complaint arose more than two years ago. Therefore, this action is barred by statute of limitations, Or. Rev. Stat. §§ 12.110(1) and 30.275(9).

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Give Timely Notice of Claim)

20.

Defendants incorporate herein the admissions, denials and allegations set forth above.

21.

Plaintiff failed to timely file notice of claim regarding the state law tort claims raised in his civil complaint under Or. Rev. Stat. § 30.275 before filing his civil complaint.

NINTH AFFIRMATIVE DEFENSE

(Lack of Economic Injury Or. Rev. Stat. § 30.650)

22.

Defendants incorporate herein the admissions, denials and allegations set forth above.

23.

Plaintiff's prayer for noneconomic damages on his state law claims is barred absent his establishing that he suffered economic damages.

TENTH AFFIRMATIVE DEFENSE

(Claim and Issue Preclusion)

24.

Defendants incorporate herein the admissions, denials and allegations set forth above.

25.

"Claim preclusion prohibits a party from relitigating a cause of action against the same defendant [or those in privity with that defendant] involving the same factual transaction as was litigated in the previous adjudication." *Shuler v Distribution Trucking Co.*, 164 Or. App. 615, 621, 994 P.2d 167 (1999). The doctrine of collateral estoppel or, issue preclusion, precludes future litigation "once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the parties." *Kremer v Chemical Constr. Corp.*, 456 U.S. 461, 467 n. 6 (1982). Defendants assert that, to the extent Plaintiff's claims have been litigated in previous cases, they should be dismissed.

26.

Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

JURY DEMAND

27.

Defendants demand a jury trial pursuant to Fed. R. Civ. P. 38(b).

WHEREFORE, Defendants pray for judgment herein denying Plaintiff relief and granting Defendants their costs, disbursements and attorney fees incurred in the defense hereof.

DATED May 18, 2020.

Respectfully submitted,

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